

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 222 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DR. V KURIEN

Versus

HARSHA PURSHOTTAMDAS PATEL

Appearance:

MR BHARAT J SHELAT for Petitioner with Mr.D.C.Dave
MR BS PATEL for Respondent No. 1 with Mr.B.N.Raval
PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/11/98

ORAL JUDGEMENT

Heard Learned Advocates Mr.B.J.Shelat for the petitioner and Mr.B.N.Raval for the respondent no.1 and learned APP Mr.P.B.Bhatt for the respondent no.2.

1. The petitioner before this court is the accused in Criminal Case No.4981/91 pending before the Chief Judicial Magistrate, Vadodara. He has approached this Court by filing the present application under Section 482 Cr.PC for quashing the complaint made for commission of offence punishable under Sections 499 and 500 of IPC

and to quash the process issued by the Chief Judicial Magistrate, Vadodara. The complaint has been lodged against him by the respondent no.1.

2. It appears that the petitioner in his capacity as the Chairman of the National Dairy Development Board had given an interview to the Press. In course of the said interview he expressed his opinion that the edible oil consumption in the State of Gujarat is very high and that no oil was required to be consumed as a necessity. According to his opinion the oil naturally existing in cereals and pulses is sufficient for body requirement and no extra oil consumption is required. He further expressed his opinion that excessive consumption of oil is injurious to health. He said that on account of excessive consumption of oil the women in the State after the age of 25-26 years become sydentry and lose their shape. He further said that the people if they want to remain healthy and the women if they want to remain sexy shall stop consuming oil. This article was published in the daily newspaper "Gujarat Samachar" on 11.12.1991.

3. The complainant who claims to be a social worker felt offended by the said article, more particularly by the remark referred to hereinabove and lodged the aforesaid complaint against the petitioner in the court of Chief Judicial Magistrate, Vadodara. It is alleged in the complaint that the remarks referred to hereinabove are derogatory for whole of the women community of the State of Gujarat and are intended to harm their reputation. Thus the petitioner is alleged to have committed an offence under Section 499 of the Indian Penal Code.

4. Mr.Shelat has contended that the offending remarks are really a health guide to the people of the state and cannot be said to be derogatory for the women of the state nor is it intended to harm the reputation of the women in general. He has further contended that in any view of the matter the complaint does not disclose the facts constituting the offence under Section 499 of the IPC. The complaint, therefore, requires to be quashed and set aside. In support of his contention he has relied upon the judgement of this court in the matter of Narrotamdas M Shah Vs. Maganbhai R Patel & Anr (Misc. Criminal Application No.48/84) decided on 3.5.1984. He has also relied upon the judgement of the Kerala High Court in the matter of M.P.Narayan Pillai & Others V/s. M.P.Chacko & anr, (1986 Criminal Law Journal 2002).

5. The petition is contested by the respondent no.1.

Mr.Raval has submitted that the complaint does disclose the facts constituting commission of offence under Section 499 IPC and thus prima facie case having been established against the petitioner, the complaint cannot be quashed at this stage. He has also submitted that the word person occurring in Section 499 IPC includes the words persons. In the present case the offending remark is intended to harm the reputation of the whole of the community of women and therefore it does constitute an offence under Section 499 IPC.

6. In the matter of Narrotamdas L Shah (Supra), this Court was considering whether certain remarks made against the lawyers in general in an editorial published in the daily newspaper "Jai Hind" were intended to bring disrepute to the lawyers in general and whether publication of such a derogatory remark would amount to commission of offence under Section 499 IPC. Considering the provisions contained in Section 499 IPC, the Court held as under :-

"The Section is aimed at the protection of the reputation of persons. If one looks at the definition of the offence, it contains three important elements, namely,

1. The PERSON
2. His REPUTATION and
3. The HARM to reputation of the person with necessary mens rea.

If the imputation is defamatory per se, necessary mens rea will be presumed. No resultant harm may be proved if the expression itself is defamatory per se. The maker of the statement must know that it will harm the reputation of one concerning whom the same is made. Explanation 1 includes even a dead person. We are not concerned with this explanation. Explanation 2 embraces imputations concerning a company or association or collection of persons as such. The gist of the offence is dissemination of harmful imputation concerning a person."

7. The Court also considered the judgement of the Supreme Court in the matter of G Narasimhan Vs. T.V.Chokkappa (AIR 1972 SC 2609). The Supreme Court in the said matter has observed as under:-

".....The language of the explanation is wide, and, therefore, besides a company or an association any collection of persons would be covered by it. But such a Collection of persons

must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations....."

8. The Court also considered the earlier judgement of this Court in the matter of Raj Kapoor Vs. Narendra Desai (15 GLR 125) wherein this Court held that contemptuous remarks against Bangi Community in general would not amount to defamation as defined in Section 499 IPC. Considering the above judgement, the Court held that:-

"In the instant case, also, writing published is relatable to the entire class or lawyers. The writing does not refer to any identifiable body of persons. So also the writing is not in respect to any group/class of persons as distinguished from the rest of the community of lawyers. To make out an offence of defamation the writing should be such that a person/persons to whom the writing is relatable can be identified. It is not even the case of the complainant that the writing is referable to particular group of persons as distinguished from the rest of the community of lawyers. Since the imputation, if any, is in respect of the lawyers' class as a whole and the same is not referable to a person or a group of persons who can be identified and can be distinguished from the rest of the members of the legal profession, there is no offence of defamation."

9. In the matter of M.P.Narayan Pillai (Supra) the Kerala High Court had to consider a similar question. The Court was required to consider whether certain remarks appearing in an article in respect of Serian Christian community can be said to be defamatory. The Court held that:-

"In such case the article as a whole must be read. The impact and effect of the imputation has to be considered in the background of the entire facts and circumstances stated therein. If in the second part of the publication there was something disreputable but it was removed by the

other part in the conclusions then the disreputable part alone cannot be taken out in the process of picking and choosing in order to venture a prosecution for defamation."

It further held that :-

"It is a condition precedent to maintain the prosecution that the complaint is by person aggrieved of the offence."

Considering the scope of ambit of Section 499 IPC the Court held that :-

"Under Section.499 Explanation II imputations against an association or collection of persons can be defamatory only if such persons are definite and determinable body. Only if there is a definite association or collection of persons capable of being identified it could be said that the imputation against it affects all of them and any member of the class can say that the imputation is against him also personally so as to entitle him to file a complaint for defamation. When an indefinite and unascertainable body of persons is defamed it may not be possible to single out individuals and say that they are also defamed. There cannot be defamation against a community as such."

10. Applying these principles to the facts of the present case, it cannot be said that the offending remark made by the petitioner was intended to harm the reputation of any particular person or a group of particular persons. Even if the offending remark is held to be defamatory the same cannot be said to have intended to bring disrepute to any particular woman or a particular group of women much less the complainant. In my view, therefore the complaint at the hands of the complainant the present respondent no.1 is not maintainable. To initiate a prosecution for defamation it is necessary that the complainant is the party aggrieved and the offending remark is made with an intention to harm the reputation of a particular person or a group of identifiable persons. In the present case it cannot be said that the offending remarks is per se defamatory. Considering the entire Article it appears to be a health advice and evidently lacks the necessary Mens Rea. Further the said remark is not aimed at the complainant or any other woman in particular or a particular group or Association of women. It therefore

cannot be said that the complaint discloses the facts which would constitute offence under Section 499 IPC. Since no offence under Section 499 IPC is made out the complaint requires to be quashed and set aside.

11. In view of the above discussions, the petition is allowed. The summons issued by the learned Chief Judicial Magistrate, Vadodara to the petitioner herein in Criminal Case no.4981/91 is quashed. The proceedings in Criminal Case No.4981/91 is ordered to be dropped. Rule is made absolute accordingly. There shall be no order as to costs. Mr.Raval requests that this order be stayed to enable the respondent no.1 to approach the Higher forum. The request is rejected.

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